No. 84-277 (4)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

THE BOARD OF TRUSTEES OF THE VILLAGE OF SCARSDALE and THE VILLAGE OF SCARSDALE,

Petitioners,

—vs.—

KATHLEEN S. MCCREARY, DAVID DRABKIN, ANN F. CAWLEY, ANGELINA J. MESSENGER, EDWARD R. NAPOLITANO, CHARLES E. BUTLER, JOHN D. HAWKINS, NANCY G. STEGER, RICHARD CACCIATO, CAROL ANN PASCAL, MARY T. THOMPSON and GREGORY DE SOUSA,

and

THE SCARSDALE CRECHE COMMITTEE, PATRICIA CURRAN, CYNTHIA BARSUHN, GRACE FELLOWS, DORIS ADLER, MARY TULLY, JOAN MANN and MARIA PEDULLA,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY TO BRIEFS IN OPPOSITION

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The two briefs in opposition, if not with entire consistency, treat the first question presented—as to the validity of respondents' basic free speech claim under *Widmar v. Vincent*, 454 U.S. 263 (1981)—by ignoring or twisting or trivializing it.

The Scarsdale Creche Committee relegates the question to a diversionary footnote. It says (3 n.*) "the Village seems to forget . . . that it has *never* prohibited a temporary display or symbol in Scarsdale's public parks: all applicants for symbolic displays have been accommodated—except for Respondents."

Accepting it as accurate for present purposes, that observation is entirely misleading. As stated in the petition (pp. 3-4), symbols heretofore displayed in Scarsdale's public parks have been, for present purposes, wholly innocuous, *i.e.*, never controversial. The crèche is thus far the only symbol that has generated "growing" and "escalating division" and "controversy" (Pet. App. 31a, 32a, 33a, 34a), "precisely because an aura of Village approval has adhered to it" (Pet. App. 56a). This is what the case is about—claimed rights of some citizens to free expression versus claimed rights of other citizens not to have the shared land bear a symbolic message that makes them feel alien or outcast in their own Village or compulsorily supportive of a faith they either do not share or wish to witness privately, not via government sponsorship.

Ignoring this essential character of the problem, in Scarsdale and elsewhere, cannot cause the disappearance of the vexing concerns raised in the petition (pp. 14-20). The display of other symbols, devoid of ideological or religious content, is no more pertinent to this case than were amiable legends on other license plates (*e.g.*, Arizona's "Grand Canyon State," Hawaii's "Aloha State," Minnesota's "10000 Lakes") to the slogan "Live Free or Die" involved in *Wooley v. Maynard*, 430 U.S. 705 (1977).

In an equally cursory but divergent treatment, the *McCreary* respondents also say (Br. in Opp. 9) the Village claims a "right to single out the Respondents alone" for adverse treatment. Expanding on that, and slightly alchemizing the record, these respondents say (*id.*) the Village "regularly permits religious symbolic displays in and uses of its public facilities, particularly by non-Christian groups, presumably because no one in the Village has objected to this accomodation [sic]." The record reveals *no religious symbol whatever*, other than the crèche, placed and left for days or weeks in a public park in Scarsdale. Religious speech and symbols in the library or other public buildings (Pet. App. 4a, 56a), in connection with religious services or artistic or scholarly displays, are obviously different and have for obvious reasons engendered no protests or community strife.

The suggestion of a preference for "non-Christian groups" is an oddly tendentious use of the record. It is materialized from the Court of Appeals' mention of Jewish, Bahai and Christian groups that have held services in Village buildings (Pet. App. 4a-5a). There is no evidentiary or logical basis for describing these as being uses "particularly by non-Christian groups."

The foregoing points are not major in themselves. They bring forth this brief reply mainly so that the serious submissions in the petition may not be obscured or distorted. The contentions herein noted should not serve, petitioners urge, to erase the significant differences in this setting between oral speech and live speakers, on the one hand, and ideologically or religiously charged symbols, on the other, brigaded for days or weeks with the shared public land as "message bearer" (Pet. App. 55a). Whether a municipality *must* allow such symbols, those most citizens may hate along with those most citizens may cherish, remains a question clearly presented and clearly worthy of review.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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